

1 *PARRA VICTOR*
2 *CDC No. P-58682*
3 *P.O. Box. 799002*
4 *San Diego CA. 92179*
5 *In pro se*
6
7
8

FILED

2008 AUG -4 PM 2: 27

CLERK US DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Rm DEPUTY

NUNC PRO TUNC

JUL 30 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 *VICTOR PARRA, Jr.,*
12 *Plaintiff*
13 *V.*
14 *R. HERNANDEZ, et al.,*
15 *Defendants*

Civil No. 08 CV 0191 H (CAB)

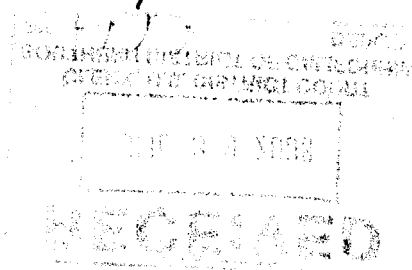
NOTICE OF MOTION TO ALTER OR AMEND
A JUDGMENT

Hearing : August 4, 2008
Time : 9:00 am
Court : E
Judge : The Honorable Cathy Ann Bencivengo

17 *COMES NOW Plaintiff Victor Parra, In prose. Please take notice that*
18 *On August 4, 2008, Plaintiff will move the court to alter or amend the entry of*
19 *judgment on defendants motion to dismiss and Alter or amend the Report and*
20 *Recommendations [DOC No. 19-1].*
21

22 *Dated July 27, 2008*

Respectfully Submitted
Victor Parra
In pro se



VERIFICATION

STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08 CV 0191 H (CAB)

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra
THAT: I AM THE Plaintiff DECLARE UNDER PENALTY OF PERJURY
I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF: July 2008 AT Richard J. Donovan
Corr. Fac. 480 Alta Road, San Diego CA. 92179

(SIGNATURE) Victor Parra
(DECLARANT PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, Victor Parra AM A RESIDENT OF Richard J. Donovan Correctional Facility County
San Diego, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~NOT~~
A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27 2008 I SERVED THE FOREGOING: Notice of Motion to
Alter or Amend a Judgment

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),
WITH POSTAGE THEREON FULLY PAID, IN THE UNITED STATES MAIL, IN A DEPOSIT BOX SO PROVIDED
AT 480 Alta Road, San Diego CA. 92179-9002

(To the Clerk)
United States District Court -
Southern District of California
880 Front Street, Suite 4290
San Diego CA. 92101-8900

Sylvie P. Snyder
Deputy Attorney General
110 West A. Street, Suite 1100
San Diego CA. 92101
P.O. Box. 85266
San Diego CA. 92186-5266

THERE IS DELIVERY SERVICE BY UNITED STATES MAIL AT THE PLACE SO ADDRESSED, AND THERE IS
REGULAR COMMUNICATION BY MAIL BETWEEN THE PLACE OF MAILING AND THE PLACE SO ADDRESSED.
I DECLARE UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

DATE: July 27, 2008

Victor Parra

(DECLARANT PRISONER)

2

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2 CDC No. P-58682
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CLERK US DISTRICT COURT
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NUNC PRO TUNC
JUL 30 2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 VICTOR PARRA, Jr.,
12 Plaintiff
13 V.
14 R. HERNANDEZ, et, al.,
15 Defendants

Civil No. 08CV0191 H (CAB)

MOTION TO ALTER OR AMEND A JUDGMENT
PURSUANT ON (FED. R. CIV. P.) Rule 59(c)

Hearing : August 4, 2008

Time : 9:00 am

Court room : E

Judge : The Honorable

Cathy Ann Bencivengo

17 On July 22, 2008 This Court filed a "Report and Recommendations" granting
18 defendants motion to dismiss [DOC No. 19-1]

19 In response to defendants motion to dismiss plaintiff filed an opposition on
20 July 12, 2008 see Supplemental Lodgement following this motion.

21 The court apparently did not receive the documents plaintiff submitted as an
22 answer in opposition to defendants motion to dismiss.

23 Plaintiff now respectfully moves the court to review and consider plaintiff response
24 to defendants motion to dismiss an incorporate arguments of law and fact in an altered or
25 Amended Report and Recommendations.

26
27 Dated : July 27, 2008.

Respectfully Submitted

Victor Parra In Prose

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VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08CV0191 H (CAB)

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, Victor Parra
 THAT: I AM THE Plaintiff DECLARE UNDER PENALTY OF PERJURY
 IN THE ABOVE ENTITLED ACTION;
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF: July 2008 AT Richard J.
Donovan Correctional Facility 480 Alta Road, San Diego CA 92179-9002

(SIGNATURE)

Victor Parra

(DECLARANT PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

I, VICTOR PARRA AM A RESIDENT OF Richard J. Donovan Correctional Facility San Diego
County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~NOT~~
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27 2008 I SERVED THE FOREGOING: Motion to Alter or
Amend a Judgment Pursuant to Fed R. Civ. P. 59(c)

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

ON THE PARTY (S) HEREIN BY PLACING A TRUE COPY (S) THEREOF, ENCLOSED IN A SEALED ENVELOPE (S),
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(To the Clerk) --
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DATE:

July 27, 2008Victor Parra

(DECLARANT PRISONER)

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

11 VICTOR PARRA, Jr.,
12 Plaintiff

13 V.

14 R. HERNANDEZ, et al.,
15 Defendants

Civil No. 08 CV 0191 H (CAB)

MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF PLAINTIFFS MOTION TO
ALTER OR AMEND A JUDGMENT Fed.R.Civ.P. 59 (e)

Hearing : August 4, 2008
Time : 9:00 am
Court room : E
Judge : The Honorable
Cathy Ann Bencivengo

18 This memorandum of Law is submitted in support of plaintiffs motion
19 to alter or amend a Judgment pursuant to Federal Rules of Civil Procedure (Fed.R.Civ.P.)
20 Rule 59 subsection (e) which states:

21 "Any motion to alter or amend a judgement shall be filed
22 no latter that 10 days after entry of the judgement." Id

23 Standard of Review

24 Rule 59(e) preserves the district courts right to alter or amend a
25 judgment after the judgment is entered. Motions to alter or amend a judgment are
26 appropriate where they involve reconsideration of matters properly encompassed in the
27 decision on the merits. *White V. New Hampshire Dept of Employment Sec.*, 455 U.S. 445,
28 451, 102 S.Ct. 1162, 1166 (1982).

1 The case law acknowledges four grounds that justify altering or amending a
 2 judgment: to incorporate an intervening change in the law, to reflect new evidence not
 3 available at the time of trial, to correct a clear legal error and (to prevent a manifest
 4 injustice) (Messina V. Krakower, 439 F.3d, 758 (D.C. Cir. 2006))

5 These motions are not limited to judgments entered after a trial; they may also be
 6 used if the Court has entered judgment without trial, for example, by granting a motion to
 7 dismiss or for summary judgment. see Emory V. Secretary of Navy, 819 F.2d 291, 293 (D.C.
 8 Cir. 1987)

9 A party seeking to alter or amend a judgment must file the motion within 10 days
 10 after the district court enter its judgment on the docket see Schudel V. General Elec. Co.,
 11 120 F.3d 991 (9th Cir. 1997) (noting that such motions be filed, not served, within 10
 12 days following entry of judgment), Cert. denied. 523 U.S. 1094, 118 S.Ct. 1560 (1988) Prisoner
 13 "mail box rule" has been adopted by some courts for Rule 59(e) motions. Consequently,
 14 a pro se prisoner's papers will be deemed file when deposited with the post office.
 15 Morris V. Unum life Ins. Co., 430 F.3d 500, 502 (1st Cir. 2005).

16 On March 13, 2008, This Court perform a sua sponte screening of the
 17 complaint.

18 On May 23, 2008 Defendants file motion to dismiss

19 On July 12, 2008 Plaintiff timely filed an opposition to defendants motion
 20 to dismiss.

21 On July 22, 2008 This Court filed a Report and Recommendations and
 22 granted defendants motion to dismiss.

23 Plaintiff a prisoner confined at Unit 8, Administrative Segregation with
 24 limited access to legal supplies, pencil, paper and copy machine. Submits a Copy of his
 25 opposition to dismiss in support of his motion to alter or amend the judgment on
 26 defendants motion to dismiss ruling.

27 Because plaintiff only has 10 days to file such motion plaintiff submits
 28 the motion, followed by a Supplemental Lodgement containing a copy of all documents

1 Filed on July 12, 2008.

2 Plaintiff respectfully request the order [DOC No. 19-1] "Report and
3 Recommendation" be altered or amended to reflect plaintiff's opposition and his legal
4 arguments considered and incorporated in the court's conclusion of law and fact.
5

6 Dated: July 27, 2008

7 Respectfully Submitted
8 Victor Parra
9 In Prose
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VERIFICATIONSTATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Case No. 08 CV 0191 H CAB

(C.C.P. SEC.446 & 201.5; 28 U.S.C. SEC. 1746)

I, VICTOR PARRA
Plaintiff DECLARE UNDER PENALTY OF PERJURY
 THAT: I AM THE Plaintiff IN THE ABOVE ENTITLED ACTION;
 I HAVE READ THE FOREGOING DOCUMENTS AND KNOW THE CONTENTS THEREOF AND THE SAME IS
 TRUE OF MY OWN KNOWLEDGE, EXCEPT AS TO MATTERS STATED THEREIN UPON INFORMATION, AND
 BELIEF, AND AS TO THOSE MATTERS, I BELIEVE THEM TO BE TRUE.

EXECUTED THIS 27 DAY OF: JULY 2008 AT Richard J. Donovan
Correctional Fac. 480 Alta Road, San Diego CA 92179-9002

(SIGNATURE) Victor Parra
 (DECLARANT/PRISONER)

PROOF OF SERVICE BY MAIL

(C.C.P. SEC.1013 (a) & 2015.5; 28 U.S.C. SEC.1746)

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County, STATE OF CALIFORNIA. I AM OVER THE AGE OF EIGHTEEN (18) YEARS OF AGE AND AM ~~THE~~
 A PARTY OF THE ABOVE-ENTITLED ACTION. MY STATE PRISON ADDRESS IS: P.O. BOX

ON July 27 2008 I SERVED THE FOREGOING: Memorandum of Points
And Authorities in Support of Plaintiff's Motion to Alter or Amend a Judgment Fed.R.C.P.
59 ce)

(SET FORTH EXACT TITLE OF DOCUMENTS SERVED)

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DATE: July 27, 2008Victor Parra

(DECLARANT/PRISONER)